IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1365 of 1999
with
CRIMINAL APPEAL No 95 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJU @ SHAYM SUNDAR @ SHYAM OM PRAKASH CHAUHAN
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1365 of 1999
MS BANNA S DUTTA for the appellant.
Mr.H.H. Patel, ADDL. PUBLIC PROSECUTOR for the respondent.
2. Criminal Appeal No. 95 of 2000
Mr.H.H. Patel, ADDL. PUBLIC PROSECUTOR for the appellant.
Ms.Banna S. Dutta for the Respondent.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and

MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/03/2002

COMMON ORAL JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

Criminal Appeal No.1365 of 1999 is filed by the convict under section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code") and Criminal Appeal No.95 of 2000 is filed by the State under section 377 of the Code for enhancement of sentence. Both these appeals are filed against the judgement and order of sentence passed by the Court of learned Sessions Judge, Panchmahals at Godhra in Sessions Case No.66 of 1999 on 6.10.1999, by which the learned Judge was pleased to convict the appellant of Criminal Appeal No.1365 of 1999 under section 328 of Indian Penal Code (hereinafter referred to as "IP Code") and to punish him rigorous imprisonment for five years and fine of Rs.500/-, in default to further undergo simple imprisonment for six months and was pleased to convict for offence under section 379 of IP Code also, and to punish rigorous imprisonment for two years and fine of Rs.250/-, in default simple imprisonment for three months. The learned Judge was pleased to order that both the substantive sentences to run concurrently and that the accused be given benefit of set off.

2. On 13.10.1998, the complainant of this case was to travel from Ratlam to Bombay. At Ratlam Railway Station he obtained reservation in 2904 Up Golden Temple Express in Coach No.S-4 on Berth No.55. The accused also boarded this very train having reservation on Berth No.61 in the same compartment. According to the prosecution, after the train started from Ratlam Station and before it reached Dahod and Godhra, the accused developed intimacy with the complainant. The accused inquired about the destination of the complainant while telling about his own destination and profession, etc. The complainant had a water bottle which was borrowed by the accused for a while and after about five minutes, it was returned to the complainant. As per the case of the prosecution after drinking water from the said bottle, the complainant became unconscious. It is the case of the prosecution that, the accused had administered "Larpose 2 mg." tablets in that water bottle. Thereafter the accused took away the bag of the complainant along with his clothes, wrist watch, cash totalling to Rs.700/-. The complainant filed the complaint. The Police after investigation chargesheeted the accused for the offence under section 328 and 379 of the IP Code.

3. The learned Judge framed charge against the accused for the offence punishable under section 328 and 379 of IP Code at Exhibit 2. The charge was explained to the accused. He pleaded not guilty to the same and hence, was tried. The prosecution examined, in all, 19 witnesses and produced documentary evidence. Out of these 19 witnesses, the important witnesses are, (i) PW 6, exhibit 17, Srinivas Mormukat Bansal, a Panch witness, to a Panchnama, Exh. 16 of Muddamal clothes, tablets, etc.; (ii) PW 17, exhibit 18, Bhairavnath Madhavbhai, who is also a Panch witness to a Panchnama, exh.14, of bag of the complainant, clothes and tablets; (iii) PW 9, Exh.21, Guddukhan Noorkhan, a Coolie, at Ratlam Railway Station; (iv) PW 13, Exh.30, Chhaganlal Bhikhubhai Rohit, Executive Magistrate, who conducted Test Identification Parade; (v) PW 14, exh.36, Ajitsinh Devisinh Solanki, Hand Writing Expert; (vi) PW-18, Exh.58, Bharatkumar Kalubhai Baria, a Panch Witness to the Panchnama of Test Identification Parade; (vii) PW-15, Exh.44, Anwarkhan Sikandarkhan, another Coolie at Ratlam Railway Station; (viii) the complainant himself is examined as PW-17, Exh.54; and, (ix) Investigating Officer, Bharatsinh Baburao Patil is examined as PW 16, Exh.45.

Besides, the prosecution has also produced documentary evidence, such as, Railway reservation chart, various Panchnamas, opinion of the hand writing expert, Yadi for sending Muddamal, exh.47, telephone wardi, exh.53, etc.

4. In his further statement, the accused had denied the case of the prosecution but did not lead any evidence in support of his defence to prove that the case of the prosecution was false.

5. On appreciation of the evidence adduced by the prosecution, the learned Sessions Judge held that the prosecution has proved beyond reasonable doubt that the accused was guilty of the offence under sections 328 and 379 of IP Code. The learned Judge after holding that the appellant had committed offence punishable under sections 328 and 379 of IP Code, sentenced the accused as mentioned earlier by his judgement and order dated 6.10.1999. This gives rise to the present two appeals viz. (i) Criminal Appeal No.1365 of 1999 by the accused; and, (ii) Criminal Appeal No.95 of 2000 by the State.

6. Criminal Appeal No.1365 of 1999 was admitted and ordered to be heard with Criminal Appeal No.95 of 2000 by order dated 5.4.2000. The accused had filed Criminal Misc. Application No.6607 of 2000 in Criminal Appeal

No.1365 of 1999 wherein this Court by order dated 27.11.2000 had directed the office to list the Criminal Appeal as a short sentence matter before the appropriate Bench. The learned advocate Ms.Banna Dutta appearing for the accused and the learned Additional Public Prosecutor Mr.H.H. Patel appeared for the State in both the appeals. The learned Advocate, Ms. Banna Dutta, submitted that the accused had filed Criminal Misc. Application No.6693 of 2001 in Criminal Appeal No.1365 of 1999 wherein this Court by order dated 9.11.2001 had released the accused on bail.

7. We have considered the submissions advanced by both the learned counsel for the accused as well as State and reappreciated the whole evidence on record.

8. The complainant, Samir Zahiruddin has examined as PW 17 at exh.54. He deposed in Hindi, but the same was recorded in the presence of the learned Additional Public Prosecutor, Mr.Patel and the learned advocate Mr.Mehta for the accused, in Gujarati after translation. The complainant had deposed that on 13.10.1998 he was travelling from Ratlam to Bombay by Frontier Mail. He was in compartment No.S-4. His berth number was 55. He had reservation which was obtained through a Coolie, named Anwarkhan Sikandarkhan. When he had his reservation, the accused had also had his reservation. From Ratlam, he started his journey in the train at 7.00 PM. The accused came to the berth of the complainant and inquired as to where the complainant was going. The complainant replied that he was going to Bombay. The accused told that he too was going to Bombay. The accused told him that his name is Raju and he is a resident of Delhi, working as a Salesman. The complainant had a bag, a blanket and a pair of clothes. Besides that, he was having his driving licence, a wrist watch, a wallet containing cash about Rs. 300 to Rs.350/-. The complainant had also deposed that when the train reached between Dahod and Godhra, the accused took the water bottle from the complainant. He returned the same after about five minutes. The complainant after drinking water from the bottle went to sleep. Thereafter, he did not have any idea as to what had happened. As he did not reach Bombay, search was made for him. When he regained consciousness, he did not know where he was. The complainant was informed by his father that he reached Bombay on 15th. His father is residing at Bombay. They received information from Ratlam, `that the accused is arrested and they should come to Ratlam'. Therefore, he went to Ratlam with his father. After he reached Ratlam, what happened he did not know. For 4 to

5 days his position was not good. He was taken to the Police Station by his father. He narrated the incident to his father and the Police. He filed his complaint. Complaint bearing Mark 6/1 was shown to the complainant. He deposed that it is the complaint given by him to Ratlam Police. It is in his own handwriting. It is at Exh.55. He had narrated that he is robbed of his belongings by the accused. His belongings are shown and he is able to identify them. He was shown bag, Muddamal Article No.1. He stated that it is his bag. It was in his luggage. He deposed that the accused, who was travelling with him, he can identify, who was present in the Court. After the complainant filed his complaint, he was called by Godhra Police and he was taken to Godhra Court where Test Identification Parade was held. It was held in his presence. At that time 10 persons were made to stand in a line and from amongst those 10 persons the complainant had identified Raju, the accused. He was standing between the second and the third man. The same exercise was repeated for the second time. In that second exercise also the complainant had identified the accused.

9. The prosecution has examined Guddukhan as PW 9, exh.21, who is working as a Coolie at Ratlam Railway Station. He has deposed that he knew Raju for last about one and half year. Raju was coming from Delhi and was telling that he is a Salesman of a factory. On the day of the incident, i.e. 13.10.1998, Raju had met the deponent at Ratlam Railway Station and had told that he wanted to go to Bombay, therefore, reservation may be obtained for him. Raju was helped in getting reservation by brother of the deponent, Anwar. His reservation was in Train No.2904, Up Golden Temple. He had his reservation in S-4 on Berth No. 61. After the train arrived, the deponent helped the accused in boarding the train. The deponent has also stated that besides Raju, another person, named Samir, was also helped in boarding the train on Berth No.55 in Coach No.S-4. The next day, the brother of that person had come to the deponent and conveyed that his brother has not reached Bombay. The second day, Raju had returned to Ratlam. When, I came to Railway Station, at that time, Raju was having a bag with him and he said that it was empty and he found Rs.300/- from Samir. Bag was given to Anwar. In the evening, Anwar told the deponent that the boy to whom the bag belongs is administered some drugs. Therefore, the deponent handed over the accused to the Police In the cross examination also there is no material contradictions.

10. The prosecution has examined Anwarkhan Sikandarkhan, PW 15, exh.44, who has also narrated the same story. He is also working as a Coolie at Ratlam Railway Station. While deposing he has stated that the incident had taken place about 9-10 months back. He was deposing on 16.8.1999, the incident is of 13.10.1998. He deposed that, accused, Raju, is a resident of Delhi and was often coming to Ratlam. From Ratlam he was going to Bombay. Normally at the interval of 8 to 10 days he was visiting Ratlam and the deponent used to help him to board the train. Therefore, deponent knew the accused. About 9 to 10 months before the deponent had got reservation for him in Frontier Mail. The number of that train is 2904. That reservation, he had from Ratlam to Bombay; Bombay to Ratlam; and Ratlam to Delhi. The reservation form was filled in by him. On that day, he had obtained reservation for one person named Chishti. There was one relative of Chishti, whom I knew, had met the deponent and inquired as to whether the deponent had helped Chishti to board the train. The deponent replied that he had properly helped Chishti to board the train. When the deponent was getting reservation for Chishti, Raju had told the deponent to not have reservation for Chishti, he will allow him to sleep on his berth. Both had gone in the same compartment of the train. The deponent identified the accused in the Court saying that, Raju who used to meet him on Ratlam Railway Station is sitting in the Court. The deponent has then deposed that on the next day, Raju had come in Frontier Mail and told the deponent that I have finished the work of that man, to which the deponent inquired as to what work has he finished. The accused told that he has brought the bag of that man. Raju gave the bag of that person to the deponent. The deponent told that this bag belongs to that man. Raju told that the clothes he has thrown out from the running train and he has received approximately Rs. 200 to Rs.400 with wallet, which is kept by him. Raju told the deponent that he mixed something in the water and gave him to drink, then, that man become unconscious. I do not know as to where that man is. Then, the deponent took Raju to Police Station and handed over to Police. On cross examination, no material contradiction is found. The deponent has stood to this deposition.

11. The prosecution has then examined PW 13, the Executive Magistrate, Chhaganlal Bhikhubhai Rohit. He has deposed about the Test Identification Parade which was held on 6.11.1998. He has deposed in detail the manner in which the test identification parade was conducted and the fact that the complainant had

identified the accused Raju. To make it sure that the complainant has not committed any mistake in identifying the accused, the same exercise was repeated and even in repeated exercise, the complainant identified the accused. Thus, so far as the identification part is concerned, there is no manner of doubt that the complainant was able to identify the accused.

12. The prosecution has also examined one Ajitsinh Devisinh Solanki, PW 14, exh.36, who is Hand Writing Expert, who has identified the hand writing of the accused, by which it is established that the reservation form was filled in by the accused for getting the reservation on the day of the incident, i.e. 13.10.1998. The opinion of the Hand Writing Expert is produced at exh.37, which reads as under:

> "The person who wrote the blue encircled standard writings and signatures marked 'B1 to B6 and C' also wrote the red encircled disputed writings and signature marked 'A'."

Thus, it is clear that the accused had obtained reservation for which reservation form was filled in by the accused in his own hand writing.

13. Learned advocate, Ms.Banna Dutta, appearing for the appellant-original accused in Criminal Appeal No. 1365 of 1999, submitted that the prosecution is not able to establish the case against the accused inasmuch as the owner of the medical store from whom it is alleged that the accused had purchased the tablets `Larpose 2 mg.' has not supported the case of the prosecution and has turned hostile being PW 3, exh.12. But then the Panch, Narayan Ratanlal, PW 10, exh.22 has deposed that, `the person who was arrested by the Police had stated that he had purchased the tablets from the medical store. The Panch witness had accompanied that person and the Policeman to that medical store. The medical store to which the person had taken the Panch Witness and the Policeman was named "Sheth Medical Store" and its owner was Sanjay. The Panch Witness has deposed that this medical store was shown by the person who was arrested by the Police. The Police had recorded the proceedings and in the said proceedings, the Panch Witness had put his signature. He has identified his signature in the said Panchnama which is produced at exh.23. This is sufficient to establish that the accused had purchased `Larpose 2 mg.' tablets from the medical store. Further, these tablets are recovered from the accused and that is stated by PW 7, exh.18, Bhairavnath Madhavbhai. He has stated that on

21.10.1998 he was called by the Police to be a Panch and along with him, there is another Panch named Kamlakar. He has deposed that from the accused a suit case, a bag having clothes and tablets were recovered. He has identified the muddamal article 1, the bag; muddamal article 6, the suit case. Besides that accused was having tablets which were shown to the Panch and were seized by the Police. Therefore, it is clear from this evidence that the accused had purchased the tablets in question, which were recovered from him under the Panchnama at exh.14.

14. From the evidence of Gudukhan Noorkhan, PW 9, exh.21, and the evidence of Anwarkhan Sikandarkhan, PW 15, exh.44, it is clear that the accused had secured reservation in the train known as 'Golden Temple Mail' bearing No.2904 Up and travelled in Coach No.S-4 on Berth No.61 and the complainant had also travelled in that compartment on Berth No.55. From the evidence of the complainant, it is clear that the accused had administered him some drug in water, whereby, he became unconscious and was robbed of his belongings.

15. In totality, the evidence is more than sufficient to implicate the accused in the offence alleged against him. His obtaining tablets from medical store, his obtaining reservation with the help of Coolie, Anwarkhan Sikandarkhan, his travelling in the same compartment along with the complainant, his returning on the next day to Ratlam Railway Station and conveying to said PW 15 about the work being finished of that man and showing him the bag of the complainant. A suitcase, bag and tablets were recovered from the accused. Learned advocate appearing for the appellant-accused is not able to assail out any evidence or material on the basis of which it can be held that the learned Judge has committed any error in convicting the appellant-accused of the offence alleged against him.

16. Learned Additional Public Prosecutor Mr.H.H. Patel is also not able to point out anything for which the appeal filed by the State being Criminal Appeal No.95 of 2000 for enhancement of the sentence is required to be entertained and allowed. The learned Judge while exercising his discretion has awarded the sentence of rigorous imprisonment for five years and a fine of Rs.500/-, in default simple imprisonment for six months for the offence under sec.328 of IP Code. It is true that the maximum punishment provided under sec.328 of IP Code is 10 years, but then, we do not find any reason for which the discretion exercised by the learned Sessions

Judge is required to be interfered with.

17. In the result both the Criminal Appeals fail. The conviction of the appellant-accused recorded under sections 328 and 379 of the Indian Penal Code as well as punishment imposed for commission of the said offence is hereby maintained.

18. The bail bond on which the appellant accused is released under the orders of this Court in Criminal Misc. Application No.6693 of 2001 dated 9.11.2001 is hereby ordered to be cancelled. The Police is directed to arrest the appellant, original accused to undergo the remaining part of the sentence.

(K.R. Vyas, J.)

(Ravi R. Tripathi, J.)

karim